Purnells

Guide To Creditors Voluntary Liquidation's For Directors of Insolvent Companies

Purnells

Index

Purnells, 5a Kernick Industrial Estate, Penryn, Cornwall, TR10 9EP
Telephone: 01326 340579
Email: chris@purnells.co.uk
www.purnells.co.uk

Introduction to Purnells

Welcome to Purnells' guide to Creditors Voluntary Liquidations.

We are a firm of Licensed Insolvency Practitioners not Accountants and therefore can give you and your Company the professional advice you require.

With two qualified Licensed Insolvency Practitioners and twelve offices we provide **FREE advice throughout the UK**.

As insolvency practitioners we also specialise in interpreting the legislation set out in The Insolvency Act 1986, The Insolvency (England and Wales) Rules 2016 and related case law to provide insolvency help and advice to our clients.

Our initial meetings are free and we always provide a letter of advice to our clients without charge, so they can always rely on what we have said in writing.

Wherever you are in the UK one of our qualified licensed insolvency practitioners can provide you with fast, free and confidential insolvency advice over the telephone or in person. We will explain in clear and plain English all of the insolvency options open to you to enable you to make an informed decision as to which option you wish to follow.

Our aim is to provide **identifiable, measurable and financial benefits** by providing clear insolvency advice to you and your limited company.

Purnells

What is a Creditors Voluntary Liquidation?

A Creditors Voluntary Liquidation or "CVL" is a liquidation where the directors "voluntarily" arrange to place their company into liquidation as opposed to having their company "compulsorily" wound up by the Court.

After taking advice you would instruct a private sector insolvency practitioner to work with you to place your company into Creditors Voluntary Liquidation.

A Creditors Voluntary Liquidation is the most common form of liquidation and a planned CVL of your company can, perhaps surprisingly, realise huge financial benefits, some of which are listed below.

A short factual review with an Insolvency Practitioner prior to taking the decision to place your limited company into liquidation provides you as a director with a planning opportunity and could both improve the position for creditors and enable you to formulate a strategy for a new or similar business venture going forward. That plan might include some or all of the following:

- A re-start company (if required),
- Reducing staff numbers,
- A company restructure which eliminates the existing debt burden of VAT, PAYE, Corporation Tax, trade creditors etc,
- Closing unprofitable units,
- Leaving behind burdensome property leases,
- Leaving behind costly hire purchase, lease purchase, leasing, rental or contract hire agreements, or
- Terminating unprofitable contracts.

More information on the difference between a solvent and insolvent liquidation can be found at www.creditorinsolvencyguide.co.uk

Also please feel free to visit our What is a Creditors Voluntary Liquidation or CVL? page on our main website for more information.

Purnells, 5a Kernick Industrial Estate, Penryn, Cornwall, TR10 9EP
Telephone: 01326 340579
Email: chris@purnells.co.uk
www.purnells.co.uk

Employee Considerations

Consultation

If employees are being made redundant then they are entitled to a consultation with their employer. This involves speaking to them about:

- Why they are being made redundant, and
- any alternatives to redundancy.

If by liquidating your company you will be making up to 19 redundancies, there are no rules about how you should carry out the consultation. If you will be making 20 or more redundancies at the same time however, then the collective redundancy rules will apply.

Your employees can make a claim to an employment tribunal if you do not properly consult, for example if the period of consultation starts late, or you do not consult at all.

Length of Consultation

There is no time limit for how long the period of consultation should be, but the minimum is:

- 20 to 99 redundancies - the consultation must start at least 30 days before any dismissals take effect.
- 100 or more redundancies - the consultation must start at least 45 days before any dismissals take effect.

Collective Redundancy Rules

If you are making 20 or more employees redundant at the same time, the consultation should take place between you and an employee representative ("rep").

This will either be:

- A trade union rep (if your employees are represented by a trade union), or
- An elected employee rep (if your employees are not represented by a trade union, or you do not recognise the trade union).

Electing Employee Reps

If you have employees that will be affected by the proposed redundancies they can:

- Stand for election as an employee rep.
- Vote for other reps.

Collective Consultations Must Cover:

- Ways to avoid redundancies.
- The reasons for redundancies.
- How to keep the number of dismissals to a minimum.
- How to limit the effects for employees involved, for example by offering retraining.

You must also meet certain legal requirements for collective consultations, as follows:

Redundancy Consultations

If you do not consult employees in a redundancy situation, any redundancies you make will almost certainly be unfair and you could be taken to an employment tribunal.

You must follow 'collective consultation' rules if you are making 20 or more employees redundant within any 90-day period at a single establishment.

There are no set rules to follow if there are fewer than 20 redundancies planned, but it is good practice to fully consult employees and their representatives. An employment tribunal could decide that you have dismissed your staff unfairly if you do not.

Consultation does not have to end in agreement, but it must be carried out with a view to reaching it, including ways of avoiding or reducing the redundancies.

Collective Consultation

Follow these steps:

1. You must notify the Redundancy Payments Service ("RPS") before a consultation starts. The deadline depends on the number of proposed redundancies.

2. Consult with trade union representatives or elected employee representatives - or with staff directly if there are none.

3. Provide information to representatives or staff about the planned redundancies, giving representatives or staff enough time to consider them.

4. Respond to any requests for further information.

5. Give any affected staff termination notices showing the agreed leaving date.

6. Issue redundancy notices once the consultation is complete.

Notification

Notify RPS by filling in form HR1. Instructions on where to send it are on the form.

The deadline for notifying RPS depends on the number of proposed redundancies.

Number of proposed redundancies	When notification to RPS must be given
20 to 99	30 days before the first redundancy
100 or more	45 days before the first redundancy

You can be fined an unlimited amount if you do not notify RPS.

Consultation

There is no time limit on how long consultations last, but there is a minimum period before you can dismiss any employees.

Number of proposed redundancies	Minimum consultation period before dismissal
20 to 99	30 days
100 or more	45 days

Information you Must Provide to Representatives or Staff

You must provide written details of:

- The reasons for redundancies.
- The numbers and categories of employees involved.
- The numbers of employees in each category.
- How you plan to select employees for redundancy.
- How you will carry out redundancies.
- How you will work out redundancy payments.

Fixed-term Contract Employees

You do not have to include any persons employed under a fixed-term contract in collective consultation, except if you are ending their contract early because of redundancy.

If you are in any doubt as to whether the collective redundancy rules apply to you and your company or you have any queries or concerns as regards the consultation process, you should seek independent advice from a solicitor who specialises in insolvency and/or employment law.

The Procedure to Start the Liquidation

Following your initial meeting with one of our Licensed Insolvency Practitioners and if it has been determined that a CVL might be the most appropriate route for your company to go down you will receive a letter of advice which has, as an attachment, a "shopping list" of information that would have to be gathered together and made available to Purnells to enable us to proceed.

Once the required information is to hand we will contact you to agree a date and time at which a meeting of directors could be held. The purpose of that meeting is to resolve that a meeting of shareholders should be called to consider a resolution to wind up the company and appoint a liquidator and a decision procedure for creditors should also be requisitioned to confirm the liquidators' appointment.

The Chairman of the directors meeting must sign the necessary Notices to enable the shareholders meeting to be called and the decision procedure for creditors to be requisitioned and if you instruct Purnells to assist you with the liquidation we will call the directors meeting for you and also prepare the necessary Notices for signature to include letters to the Company's bankers, employees and creditors so as to ensure that all interested parties are notified of the company's intentions going forward.

It used to be the case that Notice of the proposed winding up had to be advertised in two local newspapers. That requirement has since been dispensed with however unless the nominated Liquidator, having regard to the circumstances of a particular case, has cause to believe that it would be of particular benefit or merit for the proposed winding up to advertised locally.

The minimum time that can elapse between a director signing the appropriate Notices and the meeting of shareholders and decision procedure for creditors being held is three business days, subject to bank holidays. It is considered best practice however to provide two clear days for posting and in reality the shareholders meeting and decision procedure for creditors usually takes place circa 18 days after the date the Notices were signed. This means that within 18 days of signing the appropriate Notices your Company could be in liquidation and from receipt of Purnells letter in that regard the creditor pressure you may well have been experiencing will now be directed at our office.

There are several decision procedures that can be used for creditors to consider the liquidators appointment but the ones used most often are:

a) A virtual meeting, which is essentially just a conference call, or

b) Deemed Consent.

Deemed Consent can best be illustrated with an example. Let us assume that the shareholders' meeting is scheduled to take place on 10 January at 4.00pm; it is at that meeting that the shareholders will resolve to place the Company into liquidation and appoint their own choice of Liquidator.

Provided that no objections are received to the Liquidators' appointment by 11.59pm that same day, then the Liquidator's appointment is ratified by the "deemed consent" of creditors.

In order to successfully object to the Liquidators appointment the required thresholds must be met ie. either 10 creditors in total, 10% in number or 10% in value must object by the 11.59pm deadline to stop the Deemed Consent procedure from continuing.

If the required thresholds are met then the Deemed Consent procedure will come to an end and a physical meeting of creditors will have to be called to agree the appointment of a Liquidator. Accordingly and in these circumstances, it is now quite rare for a physical meeting of creditors to take place in a Creditors Voluntary Liquidation. Indeed, Directors and Insolvency Practitioners are not permitted to hold a physical creditors meeting anymore unless one is formally requested by creditors. This change was introduced by The Insolvency (England and Wales) Rules 2016.

Ahead of the day of Liquidation Purnells would prepare all of the necessary forms, agenda, Statutory Statement of Affairs and a "Pack" of documents to be presented to the creditors via an online portal. This pack will include:

1. A summary of the directors' statement of affairs, which has been verified by a statement of truth.

2. Details are provided of any prior involvement with the company or its directors of the proposed liquidator(s).

3. Confirmation is given of the venue and date of the shareholders meeting and the date notice of the shareholders meeting was dispatched.

4. Information is provided as to what resolutions were passed at the shareholders meeting.

5. The dates on which the directors signed notices to convene the decision procedure and the date those notices were sent out to all creditors are noted.

6. Any costs paid by the company in connection with organising the decision procedure and the preparation of the Statement of Affairs are disclosed.

7. A brief report is given on the company's relevant trading history, including the director's reasons for failure.

8. Extracts from any audited, unaudited or draft accounts that may have been produced for the previous 3 years together with a deficiency account.

At the meeting of shareholders the shareholders will nominate a liquidator of their choice. The liquidators' appointment must then be ratified by the creditors; alternatively the creditors may seek to appoint a different person or persons instead.

Whichever procedure is being used to ratify the Liquidators appointment, Purnells will carefully explain the procedure so that you are fully aware of the order of events for the day.

One of the Company's directors must be the Chairman of the meeting, if either a virtual or physical meeting is taking place but Purnells would do most of the talking by running through the agenda and providing an update on the insolvency of the Company.

Following the meeting of shareholders the Company is in liquidation and all of its affairs will be dealt with by the liquidators thus relieving the directors of their day to day responsibilities in respect of the Company. Any written enquiries or calls from creditors can then be referred to the Liquidators.

Further information on How To Place A Limited Company Into Creditors Voluntary Liquidation (CVL) can also be found on our main website.

The Liquidator's Duties

The Liquidator and where applicable his agents will:

- Deal with any employee rights as a consequence of redundancy.
- Realise all available assets, including goodwill, for the benefit of the liquidation.
- When it is anticipated that there may be a distribution to creditors, liaise with HM Revenue and Customs and other creditors to agree their claims.
- Make enquiries into the Company's trading history.
- Deal with all necessary post liquidation accounting matters, including VAT and taxation.
- Report to members and creditors on the process of the liquidation annually.
- Deal with all statutory and administrative matters, as necessary in the matter.
- Undertake an investigation into the financial affairs of the Company and report to the Insolvency Service as regards the conduct of all directors in the three years preceding liquidation within three months of his appointment in Accordance with Statement of Insolvency Practice No: 2 ("SIP 2"), effective from 06 April 2016.

  To review SIP 2 please click **here**.

SIP 4 (Statement of Insolvency Practice No: 4), which had previously dealt with the Disqualification of Directors was withdrawn on 06 October 2016.

Purnells, 5a Kernick Industrial Estate, Penryn, Cornwall, TR10 9EP
Telephone: 01326 340579
Email: chris@purnells.co.uk
www.purnells.co.uk

Effects of Liquidation

General

The appointment of a liquidator does not prevent a creditor from taking legal action against the company. Creditors may still pursue actions against a company in liquidation although this will most likely only lead to more unsecured claims in the liquidation, as creditors will be unable to enforce any judgments that may be obtained. The liquidator may also apply to court to stay any proceedings.

The liquidator is not bound by contracts entered into by the company prior to his appointment and may refuse to perform or formally disclaim any onerous or unprofitable contract entered into by the company prior to liquidation. The other party will then have a claim for breach of contract which will rank as unsecured within the liquidation.

The liquidator can cause the company to enter into new contracts, in which case the associated liabilities of the company would rank as an expense of the liquidation.

Directorships

Your powers as director will cease and a summary of restrictions and your ongoing obligations are attached at Appendix 1. In addition, you are no longer required to prepare the Company's annual confirmation statements or accounts.

Co-Operation

In accordance with Section 235 of The Insolvency Act 1986 (as amended) ("the Act"), those who are or have at any time been officers of the Company shall give to the office-holders, such information concerning the Company and its promotion, formation, business, dealings, affairs or property as the office-holders may at any time after the effective date reasonable require and attend on the office-holders at such times as the latter may require.

Specifically, you will be required to complete a director's questionnaire and deliver up all property and records in your possession immediately. The Liquidator may also need your advice in relation to any employee entitlements, pensions and debtor collections.

Employment and Pension

If you received an income from the Company, you may be entitled to receive the balance of any arrears or pay, holiday pay, pay in lieu of notice and redundancy pay.

The claim is processed by the Redundancy Payments Service ("RPS") and the Liquidator has no discretion in their decision on your employment entitlement.

If you have not received information regarding your employment under separate cover and believe you should make a claim, you should contact the case handler as soon as possible, as failure to make a claim within six months of the date of liquidation may restrict your ability to receive a redundancy payment from the RPS.

Claims

Unless you have formally relinquished any claim in full, you will need to submit details in writing of any monies you are owed by the company. This would include payments you have made to employees in relation to their entitlements from your own funds.

Monies owed to creditors, including those owed to directors, rank in priority to the members and you should formalise the position on any claim as soon as possible.

You will receive correspondence in relation to any claim of which the Liquidator is aware as a matter of course. If you have not received such documentation within 28 days of the date of liquidation and believe that you are owed money from the company, you should contact the case handler, as soon as possible to ensure that the Liquidator has appropriate details of any claim.

Waiver of Claim

If you wish to formally waive your right to claim in the Liquidation, you will not receive any further correspondence from the Liquidator in that respect. Any personal loss incurred in the surrender, or partial surrender of an entitlement to monies owed by the company should be brought to the attention of your financial advisor as it may be relevant to your personal tax affairs.

Debts to the Company

Conversely, if you owe the company any money, whether via a formal loan or overdrawn loan account, the Liquidator will write to you about your intentions to repay any such amounts.

Guarantees

If you have given a personal guarantee to a company creditor that is owed money at the date of liquidation, this guarantee will now crystallise and the creditor may seek an agreement from you in relation to your obligations under that guarantee.

This obligation would also relate to cross guarantees given on behalf of any connected companies in respect of which you may have a formal involvement.

Whilst the Liquidator will not be able to give you specific advice in relation to any personal liabilities they may be able to advise you separately if they believe that no conflict of interest would exist in offering you such information.

Assets of the Company Held by Directors [or Others]

If any directors or others have the use of Company assets such as a Company credit or petrol card, vehicle, computer, tooling, or have keys to premises, these will have to be returned to the Liquidator as soon as possible. If it is not convenient to deliver those in person, you should contact the case handler to arrange collection or if possible, send them in the post using a recorded delivery service and retain evidence of postage.

Directors cannot receive money from debtors unless formally instructed by the Liquidator in writing, nor can they take assets in lieu of monies owed.

If the directors or any employees use a company vehicle, it may be possible to assign the associated finance agreement to them personally if desired, once it has been established whether there is any equity in the vehicle.

Reuse of the Company's Trading Name

Section 216 of the Insolvency Act 1986 (the "Act") imposes restrictions on directors and persons who have held that office, within one year prior to the commencement of the liquidation of the company, concerning the future use of the company's name and where applicable, it's trading name.

Any director of the company in the 12 months prior to liquidation may not be involved in the promotion, formation or management of a business whose registered name or trading name is so similar to the name(s) of the insolvency company to suggest an association with the insolvent company. This restriction lasts 5 years from the commencement of the liquidation and non-compliance will constitute a criminal offence as well as leaving you personally liable for debts of the new business.

A brief summary on the re-use of a company name to include details of the three statutory exemptions in the Rules are attached at Appendix 2.

Whilst the Liquidator cannot be involved in the process of making an application under the exemption Rules due to implications on conflict, he can forward the appropriate information to you.

You are prohibited from using the company name, or any name so similar that it can be associated with the company name and/or the client database unless you are satisfied that at least one of the three exemptions to the re-use of a company name applies to you.

More information on CVL Phoenix Companies can be found on our main website.

The Liquidation Process

Statutory Reporting

The Liquidator is required to issue a formal report to members and creditors on either the formal case closure or annually should the case exceed a twelve-month period. There is no legal requirement to report to directors unless the Liquidator feels this is necessary or you are owed money as a creditor.

As a creditor, you can choose to opt out of receiving information regarding the liquidation, but this does not preclude correspondence in regard to your claim, a change in office holders' circumstances or dividend rights. You can opt back into receiving correspondence by giving notice in writing. In the event you are a creditor of the Company, further details concerning the opting out process will be provided under separate cover.

You can, of course, contact the Liquidator or the case handler if you wish to discuss any element of the liquidation going forward.

Costs

Costs are agreed in principle by the board at the outset. However, where applicable certain costs of the liquidation process are agreed by a formal resolution passed by the Company's creditors.

More information can be found via our Liquidation Fee Guide on our main website.

Ethical Issues and Complaints

The Liquidator is required to advise that he is bound by the Insolvency Code of Ethics on all insolvency matters and must remain independent at all times. Purnells give high priority to client service and are keen to ensure that the quality of this is maintained.

If at any time you would like to discuss how the firm's service to you could be improved, or if you are dissatisfied with any element of the service you are receiving, please contact Chris Parkman as soon as possible so that he may discuss Purnells complaints policy with you.

We undertake to look into any complaint carefully and promptly and to do all we can to explain the position to you. If we do not answer your complaint to your satisfaction, you may, of course, take up the matter with the Insolvency Complaints Gateway, ("ICG"), via https://www.gov.uk/complain-about-insolvency-practitioner who will assess whether the matter needs referring to the respective licensing body for further investigation.

Appendix 1

Restrictions on and Obligations of Directors in an Insolvent Liquidation

Restrictions on the Directors

- No sale, gift, transfer of assignment of an asset, including money in hand or cash bank.
- No future receipts should be paid into the Company's bank account, but returned to the Liquidator's office for the benefit of creditors.
- No misuse of Company patents or other intellectual property.
- No payments to creditors, suppliers (or any other party) that believe they are owed money by the Company, from Company funds.
- No creditor claiming retention of title to goods previously supplied by them should be permitted to remove any goods without firstly allowing the Liquidator an opportunity to establish that their claim is valid.
- No other creditor be permitted to receive goods previously supplied.
- No acceptance of goods in transit or future deliveries from the date of liquidation.
- No contracts to be entered into, or continued, under the name of the Company.
- No payments can be made to directors or employees in relation to the monies owed by the Company for arrears of wages and redundancy.
- No statements should be made to the press and media without prior consultation with the Liquidator. If appropriate, an agreed press statement will be released by the Liquidator.

Obligations to the Liquidator

- To immediately deliver up all assets.
- To advise of any assets held by a third party.
- To deliver up all third party assets, especially any mobile phones, petrol cards, debit/credit cards, vehicles, computers, tooling or anything else belonging to the Company.
- To repay any loans or other monies owed to the Company.
- To immediately deliver up all Company books and records.

- To advise on the location of Company books and records held by a third party, including soft copies.
- To provide information in relation to asset realisations, as required.
- To provide information in relation to liabilities, as required.
- To provide information in relation to the Company employees and any pension schemes.
- To complete a Director's Questionnaire.
- To attend to the Liquidators' reasonable requests.
- To cooperate generally.

Purnells, 5a Kernick Industrial Estate, Penryn, Cornwall, TR10 9EP
Telephone: 01326 340579
Email: chris@purnells.co.uk
www.purnells.co.uk

Appendix 2

Advice on Re-use of Company Name

As a consequence of insolvent liquidation, there are certain restrictions on using the Company name again that applies to all directors of the Company in the 12 months prior to liquidation.

There are three matters that need to be addressed, as follows:

1. **Financial Matters**

   The Company name is classed as goodwill.

   Goodwill is an asset of the Company and should be paid for. The amount that should be paid depends on a number of factors, including what, if anything is detailed in the Company's financial accounts.

   Wherever possible, the Liquidator will try to agree an amount which fairly reflects what should be paid for the goodwill.

2. **Legal Restriction**

   Any company name registered with the Registrar of Companies is unique and cannot be used again until the Company is dissolved. Dissolution occurs a short period after the liquidation process has been finalised.

   If you already have or intend to set up a new company, or change the name of an existing company, you shall not be able to use the company name exactly as it is now.

3. **Trading Implications**

   While you will have received information on the use of the company name by way of verbal confirmation at a meeting with the nominated liquidator and/or their staff, or as contained in previous correspondence, the general restrictions and exemptions can be summarised, as follows:

   Setting up a company with a name by which the liquidated company was known at any time in the twelve months prior to liquidation, (or any name so similar as to suggest as association with that company) is a contravention of Section 216 of The Insolvency Act 1986. This breach makes the use of this name prohibited.

   Exemptions to the breach are:

   a) Where a company acquires the whole (or substantially the whole) of the business of an insolvent company, under arrangements made by the liquidator they can:

- inform creditors of the liquidated company within 28 days, providing prescribed information on the intended re-use of the name the company was previously known by; and

- advertise the prescribed information in the London Gazette.

b) Where an existing company with an assumed prohibited name has not:

- been known by that name for the whole period of twelve months ending with the day before the liquidating company went into liquidation, and

- has not at any time in those twelve months been dormant,

they can make an application to Court for permission to act as a director (or be involved in the promotion, formation or management of a business), that is known by a prohibited name. Such application should be made within seven business days of the winding up under Rule 22.6 of The Insolvency (England and Wales) Rules 2016 as amended.

c) Note that the Court's leave is not required where the company (or business), though known by the prohibited name within the meaning of the section has:

- been known by that name for the whole period of twelve months ending with the day before the liquidating company went into liquidation, and

- has not at any time in those twelve months been dormant.

Notwithstanding any potential criminal offence, the possible consequence of breaching Section 216 is defined by Section 217 as follows:

"That a person who is involved in the management of a company, or a person acting on instruction of someone in contravention of Section 216 of The Insolvency Act 1986 is personally liable for the debts of the company that are incurred during the period of that involvement."